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**ARA Services, Inc. and Communications Workers of America, AFL-CIO. Case 11-CA-16076**

January 27, 1995

**DECISION AND ORDER**

CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Pursuant to a charge filed by the Union on June 14, 1994, the General Counsel of the National Labor Relations Board issued a complaint on July 8, 1994, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 11-RC-5913. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 19, 1994, the General Counsel filed a Motion to Strike Portions of Respondent's Answer to Complaint and Motion for Summary Judgment with the Board. On August 23, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. On August 25, 1994, the Respondent filed an Opposition and Cross-Motion for Summary Judgment, and on September 1, 1994, the Charging Party filed a statement in support of the General Counsel's motion to strike and motion for summary judgment. Thereafter, on January 13, 1995, the Respondent filed a reply to the Charging Party's statement in support of the General Counsel's motions.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the Union's certification on the ground that the Respondent is exempt from Board jurisdiction under the doctrine of *Res*

<sup>1</sup> On September 8, 1994, the Respondent filed a motion to reopen the record in the representation proceeding to receive new evidence regarding the jurisdictional issue. By unpublished Order dated December 27, 1994, the Board granted the Respondent's motion, and having considered the Respondent's proffered evidence, reaffirmed the Board's previous September 29, 1993 Order asserting jurisdiction over the Employer. Thereafter, on January 9, 1995, the Board granted the Respondent's request to file a reply to the Charging Party's statement in support of the General Counsel's motions.

*Care, Inc.*, 280 NLRB 670 (1986), and on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent, including the jurisdictional issue, were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the General Counsel's Motion for Summary Judgment.<sup>2</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Delaware corporation, with its principle place of business in Philadelphia, Pennsylvania, is engaged in the business of operating, among other businesses, food services at colleges and universities throughout the United States including the University of North Carolina at Greensboro, located at Greensboro, North Carolina. During the 12 months preceding issuance of the complaint, which is representative of all times material, the Respondent purchased and received at its Greensboro, North Carolina facility goods and materials valued in excess of \$50,000 directly from points outside the State of North Carolina, and derived gross revenues in excess of \$500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held April 29, 1993, the Union was certified on May 12, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part-time food service employees employed by Respondent at the University of North Carolina at Greensboro; but ex-

<sup>2</sup> The Respondent's Cross-Motion for Summary Judgment is therefore denied. As we have granted the General Counsel's Motion for Summary Judgment, we find it unnecessary to pass on the General Counsel's motion to strike portions of the Respondent's answer to the complaint.

cluding all managers, working supervisors, the head baker, the A.M. and P.M. head cooks, the salad supervisor, the receiving Store Room Supervisor, the A.M., P.M., relief, and dishroom supervisors in the Board Cafeteria, the supervisor at Spencer, the Atrium shop managers, and working supervisors (Chick-Fil-A, C-S Store), the pastry chef, the executive chef, and the working supervisors (grill, Pizza Hut, and Taco Bell) in the Elliott University Center, all employees who are students at the University of North Carolina at Greensboro, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### B. Refusal to Bargain

By letter dated May 24, 1994, the Union requested the Respondent to bargain and, by letter dated May 26, 1994, the Respondent did refuse, and continues to refuse, to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after May 26, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, ARA Services, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with Communications Workers of America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part-time food service employees employed by Respondent at the University of North Carolina at Greensboro; but excluding all managers, working supervisors, the head baker, the A.M. and P.M. head cooks, the salad supervisor, the receiving Store Room Supervisor, the A.M., P.M., relief, and dishroom supervisors in the Board Cafeteria, the supervisor at Spencer, the Atrium shop managers, and working supervisors (Chick-Fil-A, C-S Store), the pastry chef, the executive chef, and the working supervisors (grill, Pizza Hut, and Taco Bell) in the Elliott University Center, all employees who are students at the University of North Carolina at Greensboro, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Greensboro, North Carolina, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 11 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 27, 1995

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William B. Gould IV, Chairman

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James M. Stephens, Member

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Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Communications Workers of America, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part-time food service employees employed by us at the University of North Carolina at Greensboro; but excluding all managers, working supervisors, the head baker, the A.M. and P.M. head cooks, the salad supervisor, the receiving Store Room Supervisor, the A.M., P.M., relief, and dishroom supervisors in the Board Cafeteria, the supervisor at Spencer, the Atrium shop managers, and working supervisors (Chick-Fil-A, C-S Store), the pastry chef, the executive chef, and the working supervisors (grill, Pizza Hut, and Taco Bell) in the Elliott University Center, all employees who are students at the University of North Carolina at Greensboro, office clerical employees, guards and supervisors as defined in the Act.

ARA SERVICES, INC.